



Georgia Department of Revenue
Policy Statement SUT-2007-11-14
Letter Rulings and Other Written Guidance
Issued by the Department

November 14, 2007

PURPOSE

This policy statement explains the rules and procedures for requesting a letter ruling from the Georgia Department of Revenue (hereinafter referred to as the “Department”).

Letter Rulings

Letter rulings are the primary vehicle for responding to advisory opinion requests from outside the Department. A letter ruling is an official advisory opinion issued by the Department in response to a specific request from a specific taxpayer. The following statute authorizes the Department to promulgate rules regarding letter rulings:

Each agency shall provide by rule for the filing and prompt disposition of petitions for letter rulings as to the applicability of any statutory provision or of any rule or order of the agency, provided that nothing herein shall limit or impair the right of an agency to seek the opinion of the Attorney General of any question of law connected with the duties of the agency pursuant to Code Section 45-15-3 or any other applicable statutory or constitutional provision. Rulings disposing of petitions have the same status as agency decisions or orders in contested cases.

O.C.G.A. § 50-13-11.

Pursuant to O.C.G.A. § 50-13-11, the Department promulgated Ga. Comp. R. & Regs. § 560-1-1-.10, which sets forth the procedural requirements for requesting a letter ruling:

Any person wishing to file a petition for a letter ruling as to the applicability of a statute or rule or order pursuant to Section 12 of the Administrative Procedure Act shall submit three copies of the petition, in writing, to the Department of Revenue . . . , stating all of the facts, including the names of those parties involved in the fact situation, the amount of tax involved and a presentation of the legal issue sought to be resolved. *The Department will not issue a letter ruling on a hypothetical fact situation and any ruling requested must affect a specific fact situation and specific parties.*

Ga. Comp. R. & Regs. § 560-1-1-.10 (emphasis added).

The Department also promulgated Ga. Comp. R. & Regs. § 560-12-1-.03, which provides clear guidance on when and how taxpayers may request a letter ruling pertaining to sales and use tax from the Department.

When any dealer is confronted with a real and substantial question as to whether a certain situation is covered by the Act, and if covered as to how it should be treated, such dealer may communicate in writing with the Commissioner for a ruling. Such dealer must state all the facts; he must name people, firms, or corporations involved, type of property, location, value, and all other pertinent matters. In cases where one interpretation of the law would be more favorable to the dealer than another, the dealer may argue for the view most favorable to him. *Requests for administrative rulings must relate to factual situations as the Commissioner will not respond to hypothetical questions.*

Ga. Comp. R. & Regs. § 560-12-1-.03(a) (emphasis added).

A letter ruling may only be relied upon by the taxpayer to whom it is issued for the transaction to which it relates. A letter ruling has no precedential value and may be superseded by a change in existing law or regulation. Ga. Comp. R. & Regs. § 560-12-1-.03 explains how letter rulings may be used by a taxpayer requesting such a ruling:

The dealer who acts on a written ruling of the Commissioner which at a later date is revoked or set aside either by the courts or the Commissioner shall be deemed to have acted in good faith. However, such ruling shall be null and void when changed by a subsequent amendment to the Act, Rule or Regulation promulgated by the Commissioner, Executive Order of the Governor or Commissioner, opinion of the Attorney General or decision of a court of competent jurisdiction.

Ga. Comp. R. & Regs. § 560-12-1-.03(b).

Under no circumstances will the Department issue a letter ruling in response to a hypothetical question. Ga. Comp. R. & Regs. §§ 560-1-1-.10 and 560-12-1-.03(a).

When Letter Rulings Will Not Be Issued

The Department will not issue a letter ruling under the following circumstances:

- A. In response to inquiries concerning alternative tax treatments or hypothetical situations;
- B. On matters scheduled for audit or in audit, appeal, or litigation;
- C. On inquiries concerning federal tax matters (such inquiries should be directed to the Internal Revenue Service) unless such inquiries concern differences in treatment for federal and state purposes;
- D. When other types of written determinations are deemed more appropriate;
- E. When the law or regulations are clear; or
- F. When a binding rule is more appropriate.

Form of Request

Requests for letter rulings must be in writing from a specific taxpayer or that taxpayer's representative. Letter rulings will not be issued in response to oral inquiries.

Mailing of Request

Requests for letter rulings should be forwarded to the following address:

Georgia Department of Revenue Administrative Division
Office of Tax Policy Section
1800 Century Boulevard, Suite 15107
Atlanta, Georgia 30345

Content of Request

Each request must contain the following information:

- A. Name, address and telephone number, FEIN, and STI of taxpayer;
- B. A power of attorney if the taxpayer is represented by a third party (Form RD-1061);
- C. Complete statement of all relevant facts;
- D. Specific question(s) to be answered;
- E. Copies of relevant documents (i.e., contracts, wills, deeds, etc.);
- F. Reference to all relevant code sections, regulations, court decisions, or advisory opinions which appear to support the taxpayer's position;
- G. A statement by the person requesting the letter ruling (if applicable) that the Department, or any other taxing authority, has previously issued an advisory opinion on the same issue (if so, cite or attach a copy); and
- H. An affidavit by the person requesting the letter ruling stating that:
 - 1. The taxpayer is not currently under audit by the Department;
 - 2. The taxpayer has not been notified by the Department concerning a pending audit;
 - 3. The taxpayer has not submitted a claim for refund containing transactions involving any issue contained in the request for letter ruling;
 - 4. The same issue is not currently the subject of litigation with the Department; or,
 - 5. The Attorney General's Office has not been, or will not be, requested to issue an opinion concerning the same issue.

Department's Response to Requests for Letter Rulings

Requests for letter rulings will be completed in the order received, unless there are reasons to do otherwise. If timing is important, the taxpayer should provide reasons for extending expedited treatment.

How Letter Rulings Are To Be Utilized by Taxpayers

A letter ruling may be relied upon only by the taxpayer to whom it is issued for the transaction(s) to which it relates. Taxpayers should reference any letter rulings received from the Department on subsequently filed return applications or other documents, if relevant.

Revocation or Modification of Letter Ruling

The Department has the authority to ascertain whether the representations made in the request reflect an accurate statement of the material facts or whether the transaction was carried out as proposed. If not, the letter ruling will not afford the person who requested it any protection.

Audits Scheduled Prior to Issuance of Letter Ruling

If, prior to the issuance of a letter ruling, a taxpayer is notified of a pending audit by the Department, or other taxing authority, the taxpayer should notify both the Office of Tax Policy Section of the Department and the examining auditor of the outstanding request for a letter ruling.

Withdrawal of Request

The taxpayer may withdraw a request for a letter ruling any time prior to issuance by the Department. The Office of Tax Policy Section may furnish its opinions to appropriate Department personnel, who may consider them for any reason within their authority. If the taxpayer's request is withdrawn, all correspondence and documents may be retained for future reference.

Appealing an Adverse Advisory Opinion

There are no provisions for appealing an adverse advisory opinion. Issuance of an adverse advisory opinion is not to be construed as meaning a taxpayer does not have the right to those provisions of the law which relate to the appeals process or a claim for refund.

Other Written Guidance Issued by the Department

Informational Bulletins

An informational bulletin is intended to provide guidance to the public and to Department personnel. It is a written statement issued to apply principles of law to a specific set of facts or a general category of taxpayers. An informational bulletin does not have the force or effect of law, and is not binding on the public. It is, however, the Department's position and is binding on agency personnel until superseded or modified by a change in statute, regulation, court decision, or advisory opinion.

Policy Statements

A policy statement is intended to provide procedural guidance to the general public and Department personnel. It is a written statement issued to assist in the administration of laws and regulations by providing procedural guidance that may be followed in order to comply with the law. A policy statement does not have the force or effect of law, and is not binding on the public. It is, however, binding on agency personnel until superseded or modified by a change in statute, regulation, court decision, or advisory opinion.